



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: Saxon, et al.
Serial No.: 09/724,373
Filed: 11/28/2000
Group Art Unit: 2841
Examiner: Gibson, Randy W.
For: INTELLIGENT LOAD DISTRIBUTION SYSTEM

Box AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Subsequent to the filing of the Notice of Appeal on April 14, 2003, applicant now submits its brief. Fees in the amount of \$320.00 are paid by the attached check. If additional fees are necessary, you are hereby authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds.

Real Party in Interest

The application is presently assigned to Meritor Heavy Vehicle Technology, LLC, although ultimately it will likely be owned by ArvinMeritor Technology, LLC.

Related Appeals and Interferences

There are no related appeals or interferences that will directly effect or be directly effected by or have a bearing on the Board's decision in this appeal.

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Status of Claims

Presently, Claims 1-5 and 7-24 are pending. However, applicant limits this appeal to Claims 9-11. Claims 9 and 10 stand finally rejected under 35 USC §102(e) over the Baker patent, and 35 USC §102(b) over the Stevenson patent. Claim 11 stands finally rejected under 35 USC §103 over the Stevenson patent combined with the Bradley patent.

Status of Amendments

Concurrent with the filing of the Notice of Appeal on April 14, 2003, applicant submitted an amendment after final that sought to cancel all claims except Claims 9-11. That is, applicant sought to make Claim 9 independent, and leave only this independent Claim 9 and the original claims 10 and 11. The examiner refused entry of this amendment holding that the amendment would raise new issues. This is not understood as the Claims 9-11 were previously pending, and effectively the amendment only seeks to cancel other claims.

Summary of the Invention

This application relates to a system wherein sensors (24A-J) sense a load signal on a vehicle. A memory unit stores load optimization data and an evaluation unit (36) is in communication with the sensor and the memory unit for evaluating the load signal based upon the load optimization data. A position sensor (44A-E) is also in communication with the evaluation unit for determining the position of a component on the vehicle for optimizing vehicle loading. In one embodiment, the component for which the position sensor determines the position is the axle, such as axle 28(d) or 28(e). In another embodiment, it is the kingpin 32 which has its position determined by the position sensor. This disclosure is set forth, for example, at Page 5, lines 19-30. Among the various disclosed benefits from this invention, and

the determination of the position of the kingpin or axle is the ability to optimize vehicle loading based upon this position, or alternatively even determine an optimized position or moving the axle relative to the kingpin.

Issues

1. Is the final rejection of Claims 9 and 10 under 35 USC §102 over the Baker patent proper?
2. Is the final rejection of Claims 9 and 10 under 35 USC §102 over the Stevenson patent proper?
3. Is the final rejection of Claim 11 under 35 USC §103 over the Stevenson patent taken with the Bradley patent proper?

Grouping of Claims

The final rejection of Claims 9 and 10 over the Baker patent is contested.

Further, the rejection of Claim 10 is separately contested from the rejection of Claim 9. That is, it does not stand or fall with the rejection of Claim 9 over Baker.

The final rejection of Claims 9 and 10 over the Stevenson patent is contested.

Further, the rejection of Claim 10 is separately contested from the rejection of Claim 9. That is, it does not stand or fall with the rejection of Claim 9 over Baker.

The final rejection of Claim 11 over the Stevenson patent taken with the Bradley patent is contested. The rejection of Claim 11 does not stand or fall with the rejection of Claims 9 and 10 over the Stevenson patent.

Notably, and as is clear from the distinct reference in the rejection, the rejection of Claims 9 and 10 over either Baker or Stevenson do not stand or fall together.

Arguments

The Rejection of Claims 9 and 10 over Baker is Improper.

The examiner points to Baker, Column 4, line 49 to Column 6, line 40 to support the rejections. It appears that much of what is found in this section of Baker might relate to the claims that are not the subject of this appeal. However, there is nothing seen in this section of Baker, and the examiner has never pointed to any particular section, which meets the limitations found in Claim 9 of having a position sensor in communication with an evaluation unit “for determining the position of a component of said vehicle” for optimizing vehicle loading.

Of course, the Claim 9 requires that there be “at least one load sensor,” a “memory unit” and an “evaluation unit in communication with said load sensor and said memory unit.” Finally, the Claim requires that there be “a position sensor in communication with said evaluation unit.” Simply, nothing in the Baker patent can meet this limitation. As such, the claims are allowable over the prior art of record.

Certainly the limitation of Claim 10 wherein the component is “an axle” is not met by Baker. For this additional reason, the rejection of Claim 10 is separately contested relative to the rejection of Claim 9.

The Rejection of Claims 9 and 10 Over Stevenson is Improper.

The examiner points to Column 7, lines 28 to 50 and Column 8, lines 14-50 to support the rejections. It appears that much of what is found in this section of Stevenson might relate to the claims that are not the subject of this appeal. However, there is nothing seen in this section of Stevenson, and the examiner has never pointed to any particular section, which meets the limitations found in Claim 9 of having a position sensor in communication with an evaluation

unit “for determining the position of a component of said vehicle” for optimizing vehicle loading.

Of course, the Claim 9 requires that there be “at least one load sensor,” a “memory unit” and an “evaluation unit in communication with said load sensor and said memory unit.” Finally, the Claim requires that there be “a position sensor in communication with said evaluation unit.” Simply, nothing in the Stevenson patent can meet this limitation. As such, the claims are allowable over the prior art of record.

Certainly the limitation of Claim 10 wherein the component is “an axle” is not met by Stevenson. For this additional reason, the rejection of Claim 10 is separately contested relative to the rejection of Claim 9.

The Rejection of Claim 11 Over 35 USC §103 Over Stevenson Combined With Bradley is Contested.

Here, the examiner argues that the concept of measuring strain on trailer axles and a kingpin is old. This misses the point entirely. It is not appellant’s argument that it invented the concept of a kingpin, or measuring the weight on the kingpin. Rather, the Claim requires that there be a position sensor for sensing the position of the kingpin. Nothing in Bradley would suggest this, and certainly nothing in Bradley would suggest modifying Stevenson to include such a position sensor. Of course, the independent Claim 9 requires that the position sensor be “in communication with said evaluation unit for determining the position of a component of said vehicle for optimizing vehicle loading. Certainly, nothing in Bradley would suggest such a modification to Stevenson. In fact, nothing in Bradley or Stevenson meets this limitation.

CLOSING

For the reasons stated above, the rejection of Claims 9-11 is improper and should be reversed. Appellant earnestly requests such an action.

Respectfully submitted,

CARLSON, GASKEY & OLDS

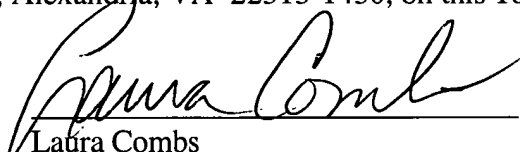
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Dated: June 16, 2003

CERTIFICATE OF MAIL

I hereby certify that the enclosed Appeal Brief is being deposited in triplicate with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16th day of June, 2003.


Laura Combs

CLAIMS APPENDIX

9. A system for optimizing load distribution on a vehicle comprising:
 - at least one load sensor generating a load signal;
 - a memory unit storing load optimization data;
 - an evaluation unit in communication with said load sensor and said memory unit for evaluating said load signal based upon said load optimization data; and
 - a position sensor in communication with said evaluation unit for determining the position of a component of said vehicle for optimizing vehicle loading.
10. The system of claim 9 wherein said component is an axle.
11. The system of claim 9 wherein said component is a kingpin of said vehicle.